

MEMORANDUM FOR: Cynthia L. Johnson
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Financial Management Service
U.S. Department of the Treasury

FROM: Belinda Corley
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Centers for Disease Control and Prevention
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SUBJECT: 31 CFR Part 210, Federal Government Participation in the
Automated Clearing House; Proposed Rule

In response to proposed rule 31 CFR Part 210, we offer the following comments to the Financial Management Service. We appreciate the opportunity to comment on this proposed ruling.

Proposed Section 210 suggests preempting private sector ACH Rules with respect to prenotifications related to Government entries by requiring the verification of the account number and at least one other identifying data element in the prenotification. This requirement supersedes the ACH Rules which specifically permit financial institutions to rely on the account number alone in posting payment to an account. We strongly support the retention of this requirement in this NPRM, for the reasons stated below. However, we do have some concerns related to implementing this proposal.

1. Prenotifications. The NPRM provides that an agency will generally be liable for erroneous or duplicate entries originated by the agencies. Many agencies, including the CDC, initiate hundreds or thousands of payment entries each day. As previously pointed out by the Social Security Administration, it is unrealistic to think that there are not going to be some clerical errors in entering the recipient's bank account information when dealing with this volume of entries in today's primarily manual environment. Since this proposed rule places the financial liability for erroneous and duplicate entries on the agencies, it is only reasonable that there be some process to allow the agencies to verify the accuracy of the banking information before sending actual payments. However, we are concerned that the current prenotification process will not provide the agencies the necessary verification in an efficient and timely manner.

Under the proposed rule, where the agency (and potentially the certifying officer) is liable for any erroneous or duplicate entry made to a recipient's account unless a prenotification is done, it is reasonable to assume that prudent agencies will begin using the prenotification process every time a change is made to a recipient's banking information in the agency's files. This will result in an extremely large increase in the number of prenotification transactions received by Treasury and the financial institutions. The workload implications of this on the agencies, Treasury, and the

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financial institutions should be carefully considered.

The Treasury Department has informed us that, at the current time, prenotification verifications are received in the form of Notices of Change or Returned Items. Although we understand that there is separate legislation which will require the financial institutions to respond to prenotifications in six days, we are not aware of any legislation requiring Treasury to provide the information to the agencies within any specific time frames. We are currently receiving Notices of Change approximately two months after a payment containing erroneous information was made. Under this proposed NPRM, where the agencies are financially liable for erroneous payments, agencies will have no choice but to hold payments for extended (but as yet unidentified) periods of time while waiting for Notices of Change or Returned Items notifications. This will result in significant interest penalty payments by the agencies and will penalize our vendors.

Moreover, the current prenotification process only provides feedback when the information sent to the financial institution is incorrect. The process needs to provide both affirmative and negative responses to prenotifications so that agencies can be assured that the financial information they are using is accurate. Without a positive affirmation that the prenoted information is correct, agencies will have no idea how long to hold a payment waiting for feedback on the prenotification sent to the financial institutions or, in fact, if a prenotification verification will ever be received. As an alternative, the legislation needs to identify a specific time period, after a prenotification is sent, that agencies should wait for a response before they can safely assume that the information is correct. Under these circumstances, the legislation should also address who would assume the financial liability for erroneous payments that occur because the verification was not received by the agency within the stated time. The requirement for either a positive or negative response to a prenotification is also necessary to affix responsibility for erroneous payments. Who will determine financial liability when an erroneous payment is made, the agency prenoted the banking information, did not receive a Notification of Change or Returned Item (and, accordingly, assumed the information was correct), but the financial institution claims they sent a response to the prenotification identifying the incorrect information? What records are financial institutions, Treasury, and the agencies required to keep as an audit trail in the prenotification process?

Last but not least, the current process relies on the U.S. Mail as the mechanism for providing prenotification responses to the agencies. One needs only to read Treasury's own literature promoting EFT as a "safer, more reliable" method of doing business to understand why the agencies are reluctant to use the mail for providing feedback on banking information. In addition to the delay associated with disseminating information through the mail instead of by some electronic means, this will provide an opportunity for many controversies as financial institutions may send prenotification responses that require changes to the recipient's banking information that are never received by the RFCor agency, or not received in a timely manner. This complicates the issue of liability if a duplicate or erroneous payment is made. This process of paper feedback, through the mail, is not realistic from a timeliness or accountability perspective.

There are significant financial liabilities at stake here for financial institutions and agencies. If the prenotification process is the only mechanism offered to agencies to protect their financial

interests in the case of erroneous payments, the process must be significantly improved to include the appropriate internal controls, audit trails, and electronic feedback mechanisms. Without these improvements, there is no incentive (and, in fact, significant risk) for agencies to aggressively implement EFT payments.

2. **Recovery of Duplicate or Erroneous Payments.** Under the ACH rules, the agency has the right (within five days) to reverse a previous entry to attempt to recover a duplicate or erroneous payment. Under many circumstances, agencies are not aware that an erroneous payment was made within the five day window provided for in this NPRM. If an erroneous or duplicate payment is made, the agencies should have the right to initiate a reversal at any time. The NPRM goes on to say that, in the event that the financial institution reverses an entry or file initiated by the agency but the financial institution cannot recover the amount of the entry from the receiver (because, for example, the receiver has withdrawn the funds and closed the account) it is the agency who bears the loss. The Service needs to provide the agencies a method of attempting to recover these erroneous payments under these circumstances.

Currently, if a paper check is erroneously sent to a recipient, the agency knows the name and address the check was issued to. This enables the agency to set up a receivable and attempt to collect the erroneous payment. However, when a payment is made to an incorrect bank account using EFT, financial privacy laws apparently prohibit the banks from releasing the identity of the account holder, their SSN, or any other identifying information that would allow an Agency to attempt to collect the erroneous payment. This can result in significant losses to the agencies, who are still liable to make another payment to the correct recipient. The legislation needs to address the rights of the agency to receive this information under these circumstances or provide some other method to collect the erroneous payment from the recipient. Without some mechanism to allow agencies to recover erroneous EFT payments, the agencies are vulnerable to significant financial losses with no apparent protection. Again, this appears to provide agencies with a significant disincentive to aggressively implement EFT.